

**PUBLIC NOTICE**

**# NR06MS.005**



**TN DEPT. OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION  
2700 MIDDLEBROOK PIKE SUITE 220  
KNOXVILLE TN 37921**

**ISSUE DATE      06/26/2006**

**EXPIRATION DATE    07/28/2006**

**TO WHOM IT MAY CONCERN:** The applications described herein have been submitted for Aquatic Resource Alteration Permits pursuant to *The Tennessee Water Quality Control Act of 1977*, T.C.A. §69-3-108.

The purpose of this notice is to advise all concerned of the proposals for which permits are sought and to solicit comments and information necessary to evaluate the probable impact of the activities upon the respective water resources. The decision whether to issue or deny will in part be based upon that evaluation. All factors that may be relevant to the proposals will be considered.

Persons wishing to comment on or object to the issuance of a proposed permit are invited to submit comments in writing to the address listed above. Written statements received in this office on or before the date of expiration of the comment period, **July 28, 2006**, will become part of the record and will be considered in the determination. The public notice number, applicant's name, permit number and coordinator should be referenced.

Interested persons may also request in writing that the director of the Division hold a public hearing on any application. The request must be filed within the comment period and must indicate the interest of the person requesting it, and the reasons that the hearing is warranted. When there is sufficient public interest, the director shall hold a hearing in accordance with Rule 1200-4-1-.05(3)(G).

After consideration of comments submitted during the public comment period, the hearing record if any, and the requirements of federal and state law, the director of the Division will make determinations regarding the final action on each permit. Permit applications, supporting documentation and related comments are available for review and/or copying.

The public notice includes tentative determinations regarding the issuance, modification, denial or termination of permits for the activities proposed herein.

**DIVISION OF WATER POLLUTION CONTROL  
MINING SECTION**

**WATER QUALITY PERMIT  
§401 CERTIFICATION/AQUATIC RESOURCE ALTERATION**

**PERMIT NUMBER # NR06MS.005**

**Permit Application Number:** ARAP-# NR06MS.005

**Applicant:** Mr. Jerry E Hackworth, Partner  
Plateau Sand  
455 Muddy Pond Road  
Monterey, Tennessee 338574

**Location:** Putnam County near Monterey, Tennessee at 36°08'29" latitude, and 86°08'29" longitude on the Obey City, Tennessee 7.5 Minute Series (Topographic) USGS Quadrangle. Wetlands associated with unnamed drainages in the Little Piney Creek watershed. Little Piney Creek is a tributary to Hurricane Creek in the East Fork Obey River Watershed.

**Background Information:** Plateau Sand has submitted an application to alter approximately 1.63 acres of jurisdictional wetlands within the Little Piney Creek watershed at the proposed Highway 62 Mine. Wetlands associated with the development of Mine Pit No. 1, Mine Pit No. 2, and a small internal road crossing are proposed alteration activities. The proposed NPDES permit area has been reduced to 205.8 acres to avoid and minimize alterations to "waters of the state."

Little Piney Creek meets the criteria for classification as high quality waters. The Obey Crayfish (*Cambarus obeyensis*) has been collected in Little Piney Creek within one-mile of the proposed facility. The Obey Crayfish is listed as a threatened species by the Tennessee Wildlife Resources Agency. The Obey Crayfish type habitat is restricted to headwater tributaries of the East Fork Obey River. The Obscure Beaked Rush (*Rhynchospora perplexa*) has been collected in a wetland within a one-mile radius of the proposed facility. The Division of Natural Heritage lists the Obscure Beaked Rush as a threatened species. The applicant indicates that the wetland where the Obscure Beaked Rush is recorded to occur is to be avoided. The applicant has submitted correspondence indicating that in the applicant's opinion the activities associated with Plateau Sand, Highway 62 Mine will not result in the degradation of the listed species or their habitat.

All activities currently proposed for developing the Plateau Sand, Highway 62 Mine will take place at or upstream of an existing 52.56 acre impoundment on Little Piney Creek. The results of biological samples collected in March 2006, indicate that Little Piney Creek partially supports aquatic life downstream of the impoundment.

Division's review of the permit application has determined that the scope of the project does not meet the conditions for coverage under a general permit.

**Project Description ARAP-# NR06MS.005:** Plateau Sand has applied for an Individual Aquatic Resource Alteration Permit to alter approximately 1.63 acres of jurisdictional wetlands within the Little Piney Creek watershed at the proposed Highway 62 Mine.

- The permit application proposes to alter or eliminate seven small jurisdictional wetland areas totaling 1.63 acres by mining related activities associated with the Plateau Sand, Highway 62 Mine. Approximately 0.97 acres of wetlands will be altered by the initial mine development activities. The remaining 0.66 acres of wetland will be excavated as the mine expands into the remaining permit area depending on the quality and demand for specific products.
- Plateau Sand proposes to enhance an existing wetland located outside the NPDES permit area within the Little Piney Creek watershed. The wetland is approximately 3.06 acres. Six 12-inch low berms are proposed to create wetland terraces. The terraces are to utilize the existing hydrology and precipitation events to saturate or inundate 7.9 acres up to a depth of 9-inches. Shallow spillways will be constructed in each berm to maintain the 9-inch inundation depth on each terrace. A buffer zone is to be established around the wetland mitigation area that totals 3.04 acres. A total of 14 acres is to be placed in a conservation easement once the mitigation area is established.
- Plateau Sand's proposal of enhancing fringe areas and expanding existing wetlands to 7.9 acres results in a potential mitigation ratio of approximately 4.85:1. This provides the applicant with a 1.38 acres margin to obtain the required 4:1 mitigation ratio for 1.63 acres of wetland alteration.
- The mitigation area is to be planted willow oak, pin oak, overcup oak, and swamp chestnut oak. Other hydrophytic tree and shrub species may also be planted to improve diversity. Tree and shrub species will be planted at the rate of 400 stems per acre.
- The following monitoring plan for the mitigation area is proposed:
  - Inundation and soil saturation is to be measured at least quarterly at all monitoring well sites. The spring measurements are to be taken at least fourteen days after April 10 (USDA growing season on the Cumberland Plateau).
  - Vegetation is to be sampled along transects annually between July 15 and August 31. The number of sample plots in each wetland type will be no fewer than five. Plant species, soils and open water in the mitigation area will be documented and photographed.

- Any sighting or evidence of wildlife use within the mitigation area will be documented.
- An annual monitoring report that compiles and summarizes all the data collected shall be submitted to the Division of Water Pollution Control Mining Section at the Knoxville Environmental Field Office.

**Tentative Determination:** The Division proposes to issue a conditional permit.

**Permit Coordinator:** Dave Turner  
Mining Section  
Division of Water Pollution Control  
2700 Middlebrook Pike  
Suite 220  
Knoxville, TN 37921

#### Aquatic Resource Alteration Permit Conditions

1. All work shall be accomplished in conformance with the approved plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. The proposed work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation and irrigation.
3. Activities that result in the alteration to “waters of the state” other than the reaches specified in the approved plans and permit require prior authorization under a separate Aquatic Resource Alteration Permit.
4. A copy of the permit and approved plans must be kept on site during all construction phases of the activity covered.
5. Drainage and erosion controls must be in place prior to commencing construction activities.

6. Construction of the mitigation area must begin prior to or concurrently with mining related activities occurring in the first 0.97 acres of wetlands to be altered. Construction of the mitigation area must be completed within a 3-month period prior to alteration of the remaining 0.66 acres of wetlands alteration. Plateau Sand must notify the Division on the completion of construction of the mitigation area. The annual monitoring reports will be due on the anniversary date of the mitigation area construction completion for a period of 5 years.
7. Tree and shrub species will be planted at the rate of 400 stems per acre. No species may comprise more than 1/3 of the total species planted. 75% survivorship must be obtained during the 5-year monitoring period. The oaks the applicant intends to plant are not suitable for areas with sustained inundation. Therefore, the applicant must supplement wetland plantings with species such as green ash, sweet gum, buttonbush, swamp mallow and Virginia willow. Trees are to be planted in areas that are only periodically inundated.
8. Shallow monitoring wells (2 ft. depth) must be installed immediately on completion of construction of the mitigation area. A minimum number of wells must be installed as follows:
  - 3-wells within the 3.06 acres of wetland to be enhanced. Each well installed on a separate terrace.
  - 8-wells within the 4.84 acres of constructed wetland. Two installed on the 1875 elevation terrace at least 650 feet apart. The six remaining wells each installed on a separate terrace.
  - On completion of installation a map indicating the location of each well must be provided to the Division. The map should be accompanied with the latitude and longitude of each monitoring well.
9. In the third year of monitoring results, an interim review of the mitigation area is to be conducted. Plateau Sand must delineate the extent that hydrology, hydric soils and hydrophytic vegetation are developing in the constructed wetland areas and report the result to the Division. At least 6.52 acres within the mitigation area must demonstrate sufficient hydrology and vegetation to indicate jurisdictional wetlands are developing.
10. At the time of the interim review the hydrology and hydrophytic vegetation should be established in at least 3.46 acres of the constructed wetland portion of the mitigation area. If less than 3.46 acres has developed wetland characteristics remedial action will be required by the Division.
11. A comprehensive post-project report must be submitted to the Division at the conclusion of the five-year monitoring period.

12. On successful completion of the ARAP, the Division will issue a letter of finding that the conditions of the permit have been fulfilled indicating that no further action is required.

### **State of Tennessee Antidegradation Policy**

Tennessee's Antidegradation Statement is found in Chapter 1200-4-3-.06 of the *Rules of the Tennessee Department of Environment and Conservation*. The primary purpose of the antidegradation policy is to establish a greater level of protection for those waters that are identified to be of high quality. Some high-quality waters are in near-pristine condition. Others are determined to be high quality due to specialized uses and/or unique features.

Generally, there are two types of high-quality waters. Outstanding National Resource Waters (ONRWs), or Tier 3 waters, are specifically designated by the Water Quality Control Board and are afforded the greatest level of protection. No new discharges or expansion of existing discharges are allowed to result in degradation of the existing water quality.

Other high-quality waters are identified by the Department as Tier 2 waters and are also protected against degradation. Some degradation may be allowed only if the Water Quality Control Board deems it economically and socially necessary. Other surface waters not specifically identified and/or designated as high quality are referred to as Tier 1 waters. Tennessee's Water Quality Standards must be achieved and/or maintained in these waters.

This permit does not obviate requirements of other federal, state or local laws.

The State of Tennessee reserves the right to modify or revoke this permit or to seek modification or revocation should the State determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the Act. Failure to comply with permit terms may result in penalty in accordance with § 69-3-115 of the Act.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within thirty days after receipt of the permit action. In such petition, each contention should be stated in numbered paragraphs, which describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" by 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in

Plateau Sand, Highway 62 Mine

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accordance with T.C.A. §69-3-110 and 4-5-301 et. seq. Questions concerning this certification should be addressed to Dave Turner at 865-594-5541 or Dan Murray at 865-594-5549.

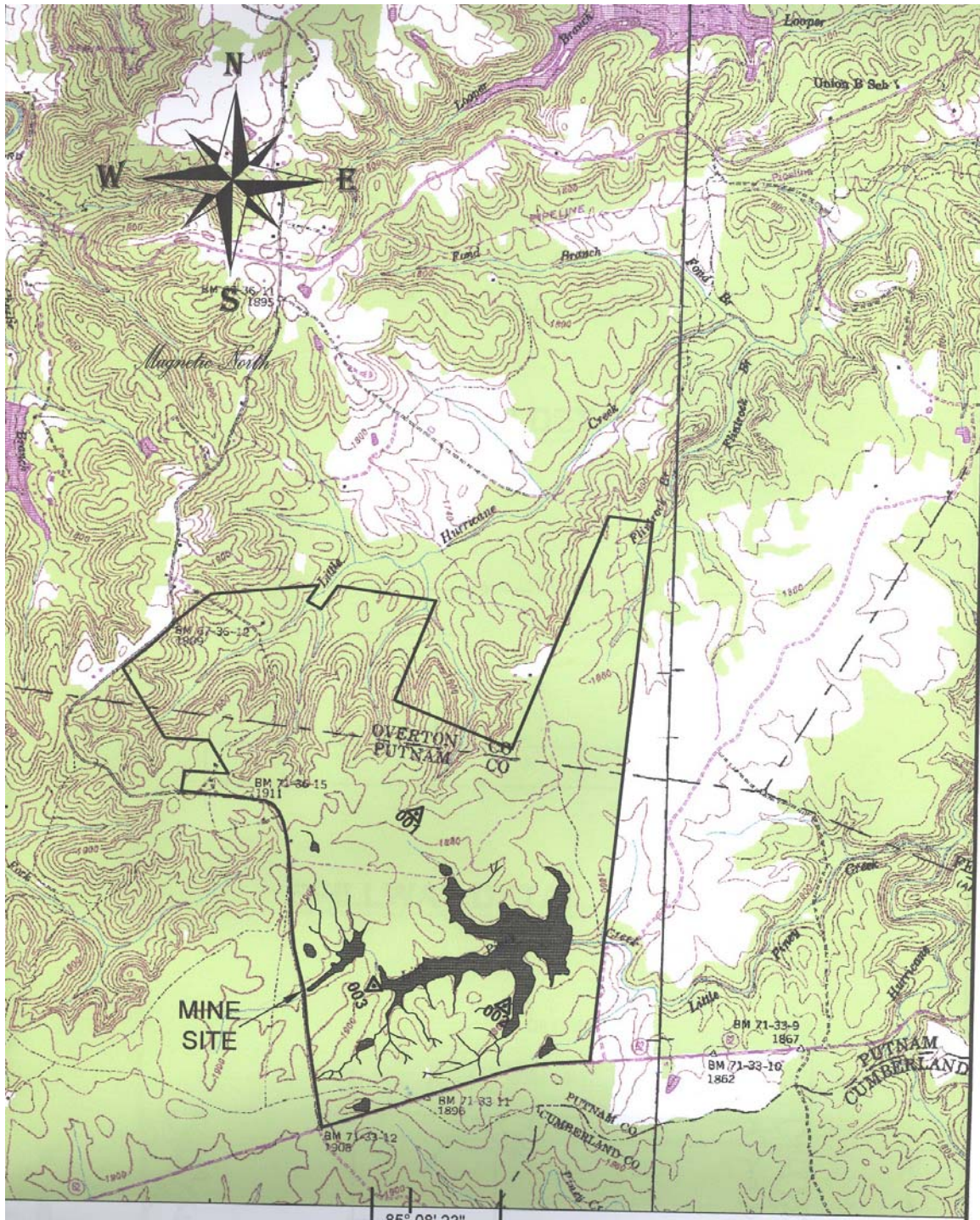
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Paul E. Davis, Director  
Division of Water Pollution Control

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Date





**Site Location Map**

Plateau Sand, Highway 62 Mine  
ARAP Application # NR06MS.005



***Notice of Determination of “No Degradation”***

**Plateau Sand, Highway 62 Mine  
Wetland Alteration  
Permit Application Number: ARAP-# NR06MS.005**

June 26, 2006

Under the *Tennessee Antidegradation Statement*, where reasonable alternatives to the degradation of a high quality tier 2 stream are not feasible, applicants may ask the Department to determine that any proposed degradation is justified on the basis of social or economic necessity. The applicant has the burden of establishing to the Department that a change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any classified uses existing in such waters.

The proposed wetland alterations described in the accompanying public notice take place in wetlands that are hydrologically connected to high quality tier 2 waters. The applicant has proposed to mitigate the wetlands on-site in wetlands that have the same hydrologic connection to the affected high quality tier 2 waters.

After reviewing the information provided by the applicant that was submitted in accordance with *Rule 1200-4-3-.06*, the Division determined that degradation to high quality Tier 2 waters will not occur as long as appropriate pollution controls are in place and permit conditions are met.